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February 9, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: GEN Docket No. 90-314, Non-Structural Safeguards Against Cross-Subsidy and Discrimination

The attached letter was sent today to William Kennard, General Counsel, with copies going to Chairman Hundt and each of the Commissioners. Please associate the document with the above-referenced docket.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Attachment

cc: Barbara Esbin
Eli Johnson
Michael Wack

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February 9, 1996

William E. Kennard
General Counsel
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: BellSouth Corporation v. FCC, Case Nos. 94-4113, 95-3315, consolidated with
Cincinnati Bell Telephone Co. v. FCC, Case Nos. 94-3701/4113, 95-3023, 3238,
3315 (6th Cir. Nov. 9, 1995) ("Cincinnati Bell") and Pacific Bell, Nevada Bell,
Pacific Bell Mobile Services and Pacific Telesis Mobile Services' Plan of Non-
Structural Safeguards Against Cross-Subsidy & Discrimination (Safeguards Plan)

Dear Mr. Kennard:

This letter is in response to the January 18, 1996, letter to you from AirTouch Communications Inc. ("AirTouch"), Comcast Corporation ("Comcast") and Cox Enterprises, Inc. ("Cox") in which they urge the Commission to initiate a rulemaking that will address the competitive effects of both the cellular structural separations and PCS non-structural separation rules. Their letter also requests that the Commission defer any action on the Pacific Bell, Nevada Bell, Pacific Bell Mobile Services and Pacific Telesis Mobile Services' Plan of Non-Structural Safeguards Against Cross-Subsidy and Discrimination (Safeguards Plan) pending a general inquiry into necessary LEC wireless safeguards. They claim that both actions are necessary as a result of the remand of the Cincinnati Bell case.

We do not dispute that the Commission needs to take action with respect to the cellular separation rules as a result of the Cincinnati Bell remand. However, the remand does not require a reexamination of the rules relating to LEC provision of PCS service. Those rules were thoroughly considered and established in GEN Docket 90-314. The time to appeal that decision has long since passed. LEC provision of PCS was not an issue in the Cincinnati Bell appeal. Nothing in that decision requires the FCC to revisit the PCS rules. Consequently, the remand of the Cincinnati Bell case provides no basis to delay or defer action on our Safeguards Plan.

Cox, AirTouch and Comcast argue that our plan allows us to "provide PCS within its landline service area on essentially an unregulated basis."¹ They conveniently ignore the fact that Commission requires a plan that addresses the issues of cross subsidy and non-discriminatory interconnection and that our Safeguards Plan and Reply Comments cover these issues in detail.

¹ January 18, 1996, letter, p. 5.

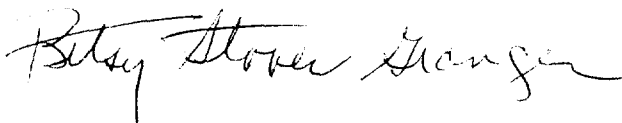
William E. Kennard
February 8, 1996
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Their comments in the January 18, 1996, letter are simply another attempt to retain a competitive advantage by delaying market entry by a competitor. It strains credibility for them to argue that under our plan, we "will have an enormous competitive advantage over other wireless providers throughout its regional services area".² We will be beginning business with no wireless customers while AirTouch has already significant market share. Cox is not without its own competitive advantages. It received a pioneer preference and will be integrating its wireless offering with its cable service. Pacific Bell Mobile Services is hardly at an enormous competitive advantage.

Our Safeguards Plan incorporates the Commission's existing accounting safeguards to protect against cross-subsidy and its rules and policies on non-discriminatory interconnection. We have fully addressed comments raised on our plan in the record. Even Cox, Comcast and AirTouch agree that we have acknowledged that we are bound by future regulatory changes.³ There is no need to defer action on our plan while the Commission addresses the cellular structural separation rules.

We respectfully urge the Commission to approve our plan without further delay.

Sincerely,



Betsy Stover Granger
Attorney

cc: Chairman Hundt
Commissioner Barrett
Commissioner Chong
Commissioner Ness
Commissioner Quello

² Id.

³ Id. at n.13.